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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION I
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MASSACHUSETTS 02109-3912

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

SEP 17 2018

City of New Bedford
Attn: Michele Paul, Director
Department of Environmental Stewardship
133 William Street
New Bedford, Massachusetts 02740

Re: PCB Risk-Based Disposal Approval under 40 CFR § 761.61(c)
Nemasket Street Lots / New Bedford, Massachusetts
MassDEP RTN: 4-15685

Dear Ms. Paul:

This is in response to the Notification¹ by the City of New Bedford ("the City") for approval of a PCB risk-based disposal plan under § 761.61(c) to address PCB-contaminated soils at the property known as the Nemasket Street Lots ("the Site") and identified on the City's records on Map 69 as blocks 86, 88 through 93, and 96 through 100 (see Attachment 2). The Site has PCB-contaminated soil and fill material that exceed the allowable PCB level for unrestricted use under the federal PCB regulations at 40 CFR § 761.61(a).

In 2017, the City removed identified PCB-contaminated soil and fill with greater than or equal to ("≥") 100 parts per million ("ppm") from the Site. The City has requested an approval to address the PCB contamination remaining at the Site under the PCB risk-based disposal option at 40 CFR § 761.61(c) that includes the following work:

- Removal of approximately 6 inches of topsoil for processing to improve the geotechnical suitability of the sub-base for the overlying capping system, with off-site disposal of excess and/or geotechnically unsuitable topsoil/debris as a ≥ 50 ppm *PCB remediation waste* in accordance with 40 CFR § 761.61(a)(5)(i)(B)(2)(iii).

¹ Information was submitted by TRC Environmental on behalf of the City to support a risk-based disposal approach for *PCB remediation waste* under 40 CFR § 761.61(c). Information was dated May 29, 2018 (Application for Risk-based Clean-up and Disposal Request Nemasket Street Lots); January 2012 (Phase II Acquired Residential Properties and Nemasket Street Lots); February 2016 (Modified Phase III Identification, Evaluation and Selection of Comprehensive Remedial Action Alternatives (Remedial Action Plan)); April 2018 (Phase IV Remedy Implementation Plan); September 10, 2018 (email clarifications on post monitoring, excess waste disposal, decontamination, and air monitoring); and September 12, 2018 (email clarification on map 69, block 125). These submissions will be referred to as the "Notification."

- Construction of a composite cap over PCB-contaminated fill material which includes: a minimum thickness of 22 inches of clean fill in areas covered by the synthetic turf field and 3 feet of clean fill in areas outside of the synthetic turf field and underlain by a visual safety fence (as a warning barrier) and a geotextile to separate the Site fill material from the clean composite cap;
- Construction of clean utility corridors; and,
- Recording a deed notice, which may be in the form of an Activity and Use Limitation ("AUL"), to document PCB concentrations at the Site, to establish use restrictions and prohibitions, to require maintenance of the composite cap, including the turf field, and to detail necessary actions if future excavation activities are planned.

Based on the EPA's review, the information provided meets the Notification requirements under 40 CFR §§ 761.61(a)(3) and 761.61(c). EPA finds that the proposed disposal of PCB-contaminated fill material beneath a clean composite cap, should effectively prevent direct exposure of the PCBs to Site users provided the clean cap is maintained. EPA has determined that disposal of PCBs in this manner will not pose an unreasonable risk of injury to health or the environment. As such, EPA may approve the disposal under 40 CFR § 761.61(c).

The City may proceed with its project in accordance with 40 CFR § 761.61(c); its Notification; and, this Approval, subject to the conditions of Attachment 1. Under this Approval, EPA is reserving its right to require additional investigation or remediation measures should EPA determine that PCBs remaining at the Site pose an unreasonable risk of injury to health or the environment.

EPA encourages the compliance with greener cleanup practices for all cleanup projects, and recommends adherence to the ASTM Standard Guide to Greener Cleanups E2893-16 (Guide) for work conducted under this Approval and the Notification. Greener Cleanups is the practice of integrating options that minimize the environmental impacts of cleanup actions in order to incorporate practices that maximize environmental and human benefit. Please see Section 6 of the Guide for the Best Management Practices (BMP) Process published May 2016. (See www.astm.org/Standards/E2893.htm for additional information) EPA encourages you to review the Guide and implement any practices that are feasible. If implemented, the PCB Completion Report (see Attachment 1, Condition 24) should include a section on BMP Documentation, as described in Section 6.6.5 of the Guide.

This Approval does not release the City from any applicable requirements of federal, state or local law, including the requirements related to remediation of PCBs and non-PCB contaminants under the Massachusetts Department of Environmental Protection ("MADEP") regulations.

Questions and correspondence regarding this Approval should be directed to:

Kimberly N. Tisa, PCB Coordinator (OSRR07-2)
United States Environmental Protection Agency
5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912
Telephone: (617) 918-1527
tisa.kimberly@epa.gov

EPA shall not consider this project complete until it has received all submittals required under this Approval, including the executed deed notice and long-term monitoring and maintenance plan. Please be aware that upon EPA receipt and review of the submittals, EPA may request any additional information necessary to establish that the work has been completed in accordance with 40 CFR Part 761, the Notification, and this Approval.

Sincerely,

A handwritten signature in blue ink, appearing to read "Bryan Olson", with a long horizontal flourish extending to the right.

Bryan Olson, Director
Office of Site Remediation & Restoration

Attachment 1: Approval Conditions
Attachment 2: Nemasket Street Lots - Map 69

cc: David Sullivan, TRC
MassDEP RTN: 4-15685
File

ATTACHMENT 1

**PCB RISK-BASED DISPOSAL APPROVAL CONDITIONS
CITY OF NEW BEDFORD – NEMASKET STREET LOTS
MAP 69 - BLOCKS 86, 88 THROUGH 93, AND 96 THROUGH 100 (“the Site”)
NEW BEDFORD, MASSACHUSETTS**

GENERAL CONDITIONS

1. This Approval is granted under the authority of Section 6(e) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2605(e), and the PCB regulations at 40 CFR Part 761, and applies solely to *PCB remediation waste* located at the Site as identified in the Notification.²
 - a. In the event that the City of New Bedford (“the City”) identifies other PCB-contaminated wastes (i.e., PCBs not identified in the Notification) subject to cleanup and disposal under the PCB regulations, the City will be required to notify EPA and clean up the PCB-contaminated wastes in accordance with 40 CFR Part 761.
 - b. The City may submit a separate plan to address the PCB contamination or may propose to modify the Notification to incorporate cleanup of the PCBs under this Approval in accordance with Condition 19.
2. The City shall conduct on-site activities in accordance with the conditions of this Approval and with the Notification.
3. In the event that the cleanup plan described in the Notification differs from the conditions specified in this Approval, the conditions of this Approval shall govern.
4. The terms and abbreviations used herein shall have the meanings as defined in 40 CFR § 761.3 unless otherwise defined within this Approval.
5. The City must comply with all applicable federal, state and local regulations in the storage, handling, and disposal of all PCB wastes, including PCBs, PCB Items and decontamination wastes generated under this Approval. In the event of a new spill during response actions, the City shall contact EPA within 24 hours for direction on sampling and cleanup requirements.

² Information was submitted by TRC Environmental on behalf of the City to support a risk-based disposal approach for *PCB remediation waste* under 40 CFR § 761.61(c). Information was dated May 29, 2018 (Request for Risk-based Clean-up and Disposal Nemasket Street Lots); January 2012 (Phase II Acquired Residential Properties and Nemasket Street Lots); February 2016 (Modified Phase III Identification, Evaluation and Selection of Comprehensive Remedial Action Alternatives (Remedial Action Plan)); April 2018 (Phase IV Remedy Implementation Plan); September 10, 2018 (email clarifications on post monitoring, excess waste disposal, decontamination, and air monitoring). and September 12, 2018 (email clarification on map 69, block 125). These submissions will be referred to as the “Notification.”

6. The City is responsible for the actions of all officers, employees, agents, contractors, subcontractors, and others who are involved in activities conducted under this Approval. If at any time the City has or receives information indicating that the City or any other person has failed, or may have failed, to comply with any provision of this Approval, it must report the information to EPA in writing within 24 hours of having or receiving the information.
7. This Approval does not constitute a determination by EPA that the transporters or disposal facilities selected by the City are authorized to conduct the activities set forth in the Notification. The City is responsible for ensuring that its selected transporters and disposal facilities are authorized to conduct these activities in accordance with all applicable federal, state and local statutes and regulations.
8. This Approval does not: 1) waive or compromise EPA's enforcement and regulatory authority; 2) release the City from compliance with any applicable requirements of TSCA or of any other federal, state or local law; or 3) release the City from liability for, or otherwise resolve, any violations of TSCA or of any other federal, state or local law.
9. Failure to comply with the Approval conditions specified herein shall constitute a violation of the requirement in 40 CFR § 761.50(a) to store or dispose of PCB waste in accordance with 40 CFR Part 761 Subpart D.

NOTIFICATION AND CERTIFICATION CONDITIONS

10. This Approval may be revoked if the EPA does not receive written notification from the City of its acceptance of the conditions of this Approval within 10 business days of receipt.
11. Prior to initiating onsite work under this Approval, the City shall submit the following information:
 - a. a certification signed by its selected remediation contractor, stating that the contractor has read and understands the Notification, and agrees to abide by the conditions specified in this Approval; and,
 - b. a certification signed by the selected analytical laboratory, stating that the laboratory has read and understands the sample extraction, analytical and quality assurance requirements specified in the Notification and in this Approval.

REMEDATION AND DISPOSAL CONDITIONS

12. *PCB remediation waste* (e.g., fill) at the Site shall be disposed on-site beneath a clean composite cap as described in the Notification. Any excess or geotechnically unsuitable *PCB remediation waste* generated during Site preparation activities shall be disposed off-site as a greater than or equal to (" \geq ") 50 parts per million ("ppm") *PCB remediation waste* in accordance with 40 CFR § 761.61(a)(5)(i)(B)(2)(iii).
13. All PCB waste (regardless of concentration) generated as a result of the activities described in the Notification, excluding any decontaminated materials, shall be marked in accordance with § 761.40; stored in a manner prescribed in § 761.65; and, disposed of in accordance with 40 CFR § 761.61(a)(5), unless otherwise specified below:
 - a. Decontamination wastes and residues shall be disposed of in accordance with 40 CFR § 761.79(g).
 - b. Moveable equipment, tools, and sampling equipment shall be decontaminated in accordance with either 40 CFR § 761.79(b)(3)(i)(A), § 761.79(b)(3)(ii)(A), or § 761.79(c)(2).
 - c. PCB-contaminated water generated during decontamination or dewatering shall be decontaminated in accordance with 40 CFR § 761.79(b)(1) or disposed of under § 761.60.

DEED NOTICE AND USE CONDITIONS

14. Within sixty (60) days of completing the activities described in the Notification and authorized in the Approval, the City shall submit for EPA review and approval, a draft deed notice. The deed notice shall include: a description of the extent and levels of contamination remaining at the Site; a description of the actions taken at the Site; a description of the use restrictions and conditions for the Site; and, the long-term monitoring and maintenance requirements for the composite cap (including the turf field) and for groundwater monitoring, which may be satisfied by inclusion of the monitoring and maintenance plan (see Condition 18). The City shall incorporate any changes to the deed notice as deemed necessary by EPA.
15. Within ten (10) business days of receipt of EPA's approval of the draft deed notice, the City shall:
 - a. Record the deed notice. A copy of this Approval shall be attached to the deed notice.
 - b. Submit to EPA a signed certification verifying that the deed notice has been recorded in accordance with 40 CFR § 761.61(a)(8), with a copy of the recorded document.

SALE, LEASE OR TRANSFER CONDITIONS

16. The City and any future transferee of the Site will be subject to, and have the benefit of the following in connection with any subsequent sale, lease, or transfer of the Site:
- a. The City shall notify the EPA of the sale, lease or transfer of any real estate interest in the Site that has an effect of allocating or sharing any responsibility for complying with the Approval to or with a different person. Such notice shall be in writing no later than sixty (60) days prior to such action. This notification shall include the name, address, and telephone number of the new entity acquiring such an interest in the affected property. In the event that the City sells, leases or transfers such real estate interest, the City shall continue to be bound by all the terms and conditions of this Approval, unless EPA approves the allocation of some or all of the Approval's responsibilities to the new owner(s), lessee or transferee. The notification procedures shall be as follows:
 - i) The new owner(s), lessee or transferee must request, in writing, that the EPA allocate some or all obligations and responsibilities under the Approval to the new owner(s), lessee or transferee;
 - ii) The EPA reviews the request, and determines whether to allocate some or all of the obligations and responsibilities under the Approval to the new owner(s), lessee, or transferee; and,
 - iii) The new owner(s), lessee or transferee provides written notification to the EPA of its acceptance of and intention to comply with the terms and conditions of the Approval or new approval, should EPA deem a new approval is necessary. The Approval or new approval may be withdrawn if the EPA does not receive written notification from the new owner(s), lessee or transferee of its acceptance of, and intention to comply with, the terms and conditions of the Approval or new approval within thirty (30) days of its receipt of the Approval or the new approval. Under such circumstances, all terms and conditions of this Approval will continue to be binding on the City.
 - b. In the event that the sale, lease or transfer of a real estate interest in the Site will involve or result in a change in the use that was not considered under the Approval, EPA may revoke, suspend, and/or modify the Approval or the new approval if it finds, due to the change in use, that the PCB risk-based disposal action will pose an unreasonable risk of injury to health or the environment. The Site owner shall record any amendment to the deed notice, resulting from any approved modification(s), within sixty (60) days of such change(s).
 - c. In any sale, lease or transfer of a real estate interest in the property, the City shall retain sufficient access rights to enable it to continue to meet the obligations under the Approval for maintenance and monitoring of the composite cap and groundwater, except as provided above.

INSPECTION, MODIFICATION AND REVOCATION CONDITIONS

17. The City shall allow any authorized representative of the Administrator of the EPA to inspect the Site, to inspect records, and to take samples as may be necessary to determine compliance with the PCB regulations and this Approval. Any refusal by the City to allow such an inspection (as authorized by Section 11 of TSCA) shall be grounds for revocation of this Approval.
18. Within sixty (60) days of completing the activities described in the Notification and authorized under this Approval, the City shall submit for EPA's review and approval, a detailed long-term monitoring and maintenance implementation plan (MMIP) for the composite cap, including the synthetic turf field, and for groundwater.
 - a. At a minimum, this MMIP shall include: a description of the activities that will be conducted, including cap inspection criteria, frequency, and routine maintenance activities; groundwater monitoring locations; sampling protocols, sampling frequency, and analytical criteria; reporting requirements; a communications component which details how the maintenance and monitoring results will be communicated to interested Site users and other stakeholders; and, a worker training component for maintenance or landscaping workers or for any person that will be conducting work that could impact the composite cap, including the turf field. The City shall incorporate any changes to the MMIP required by EPA. Activities required under the MMIP shall be conducted until such time that EPA and the Massachusetts Department of Environmental Protection ("MADEP") determine, in writing, that such activities are no longer necessary.
 - b. Alternatively, the City may modify the Long-Term Monitoring and Maintenance Implementation Plan for the Keith Middle School Property to incorporate the monitoring and maintenance requirements for the Nemasket Street Lots.
19. Any proposed modification(s) in the plan, specifications, or information in the Notification must be submitted to EPA no less than 14 calendar days prior to the proposed implementation of the change. Such proposed modifications will be subject to the procedures of 40 CFR § 761.61(a)(3)(ii).
20. Any departure from the conditions of this Approval without prior, written authorization from the EPA may result in the revocation, suspension and/or modification of the Approval, in addition to any other legal or equitable relief or remedy the EPA may choose to pursue.
21. Any misrepresentation or omission of any material fact in the Notification or in any records or reports may result in the EPA's revocation, suspension and/or modification of the Approval, in addition to any other legal or equitable relief or remedy the EPA may choose to pursue.

22. Approval for these activities may be revoked, modified or otherwise altered: if EPA finds a violation of the conditions of this Approval or of 40 CFR Part 761, including EPA's PCB Spill Cleanup Policy, or other applicable rules and regulations; if EPA finds there is migration of PCBs from the Site; if EPA finds that these activities pose an unreasonable risk of injury to health or the environment; or, if EPA finds that changes are necessary to comply with new rules, standards, or guidance for such approvals. The City may apply for appropriate modifications in the event new rules, standards, or guidance come into effect.

RECORDKEEPING AND REPORTING CONDITIONS

23. The City shall prepare and maintain all records and documents required by 40 CFR Part 761, including but not limited to the records required under Subparts J and K. The City shall maintain a written record of the PCB work and the analytical sampling for activities conducted under this Approval at City Hall, until such time as EPA authorizes, in writing, an alternative disposition for such records. All records shall be made available for inspection by authorized representatives of EPA.
24. The City shall submit a final completion report in both a hard copy and electronic version (e.g., CD-ROM), to the EPA within 90 days of completion of the activities authorized under this Approval. At a minimum, this final report shall include: a short narrative of the project activities with photographic documentation and Greener Cleanups BMP documentation, if implemented; characterization and confirmation sampling analytical results; copies of the accompanying analytical chains of custody; field and laboratory quality control/quality assurance checks; an estimate of the quantity of PCB waste disposed of; copies of manifests and bills of lading; copies of certificates of disposal or similar certifications issued by the disposer; the estimated total cost of the work conducted under this Approval; and, any additional report or certification as required under the Massachusetts Contingency Plan.
25. Required submittals shall be mailed to:

Kimberly N. Tisa, PCB Coordinator
United States Environmental Protection Agency
5 Post Office Square, Suite 100
Mail Code: OSRR07-2
Boston, Massachusetts 02109-3912

26. No record, report or communication required under this Approval shall qualify as a self-audit or voluntary disclosure under EPA audit, self-disclosure or penalty policies.

END OF ATTACHMENT 1

